IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PEITITION NO. 7807 OF 2004.

lawrence Marshall Lobo. ... Petitioner.

vs.

Balkrishna Tatojirai Shinde. .. Respondents.
since deceased by his heirs:
(1) Sunita Balkrishna Shinde
& ors.

Shri Ashutosh Khandeparkar for the petitioner.

Smt. Jyoti Chavan for Respondent Nos. 1 to 4.

CORAM: V.C.DAGA,J.

DATED: 1-10-2004.

P.C. :

. Heard rival parties on admission. Perused the petition and appreciated the submissions advanced.

2. This petition is directed against the judgment and order dated 1.7.2004 passed by the Appellate Bench of the Small Causes Court, Bombay, in Appeal No. 282 of 2002 dismissing the appeal filed by the original defendant/tenant and thereby confirming the judgment, order and decree dated 4th December 2001 passed by the Small Causes Court at Bombay, directing the defendant to vacate the suit premises and deliver vacant and peaceful possession of the suit premises to the plaintiffs. Parties are referred to in their original capacity as they were before the trial Court.

3. The plaintiffs filed a suit for eviction and possession against the defendant-tenant contending that they require the suit premises reasonably and bonafide, since they are 3 brothers residing with their respective families in two tenements of 2 rooms each and that the present accommodation available with them is insufficient inasmuch as they are not in a position to arrange marriages of their three young family members for want of accommodation.

4. The plaintiffs also submitted that the defendant would not suffer any hardship as he has already acquired suitable residential accommodation for himself and his family members at Andheri at Room No. 58, 2nd floor, Building No. 48, ’D’ Wing, L.S. Memorial Co-operative Housing Society, Manish Nagar,Andheri (W), Mumbai-400 058, in addition to one in the name of his son. These pleadings are based on material facts and particulars given in the plaint in the concised form.

5. On being noticed, the defendant appeared and filed his written statement denying need of the plaintiffs and also denied that he had acquired suitable accommodation for himself and his family members. He further submitted that quarter at Manish

Nagar, Andheri, was a service quarter admeasuring 440 sq.feet. In the said quarter he is residing along with his daughter and wife. His elder son Valerian Lobo is residing in the suit premises. Mainly, it was contended that available accommodation being service quarter provided by the employer, the said accommodation cannot be said to be an alternate suitable accommodation. It was, thus, contended that if the defendant is directed to vacate the suit premises he would suffer more hardship than that of the plaintiffs. The trial Court permitted the parties to lead their respective evidence. The rival parties cross-examined their rival witnesses.

6. The trial Court based on the above pleadings and evidence by its judgment and order dated 4.12.2003 was pleased to hold that the plaintiffs have proved their bonafide requirement and that they would suffer more hardship than that of the defendant. The trial Court discussed entire evidence available together with circumstances brought on record by the rival parties.

7. Being aggrieved and dissatisfied by the aforesaid judgment and decree passed by the trial Court, the original defendant preferred an appeal

being Appeal No. 282/2002 before the Appellate Bench of the Small Causes Causes Court, Mumbai. The learned Judges of the Appellate Bench after hearing respective parties by a well considered reasoned judgment, dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

8. The aforesaid judgment and decree passed by the Appellate Bench is a subject matter of the present writ petition filed under Article 227 of the Constitution of India.

9. Shri Khandeparkar, learned Counsel appearing for the petitioner submitted that bonafide and reasonable need of the landlords has not been proved. Firstly, he sought to rely on one of the instances brought on record which suggests that Room No.3 located on the ground floor was previously occupied by one Vasant Shethe. The said room was vacated by the said tenant. Thereafter, this accommodation came to be rented out to the brother-in-law of Shri Rajan-plaintiff No.2. This incident was sought to be used to contend that had there been any bonafide need, the available room would not have been rented out to other person.

10. The learned Counsel appearing for the respondent submitted that this room was rented out in the year 1985; whereas present suit had been filed sometime in the year 1989. At the relevant time, future need was not as pressing as it is today. Secondly, the room occupied by the brother-in-law of plaintiff No.2, is also available for use and occupation of the plaintiff, he being one of the nearest relatives. The explanation offered seems to be reasonable. This one incident alone is not sufficient to wipe out concurrent findings of fact recorded by both the Courts below.

11. Shri Khandeparkar further submitted that plaintiffs had made temporary construction of 2 rooms on the eastern side of suit premises, one admeasuring 20’ x 10’ and another admeasuring 10’ x 15’as such, need of the landlords does not survive. Learned Counsel for the respondents in reply submitted that the very fact that plaintiffs were required to resort to temporary construction which is virtually illegal construction, without obtaining prior permission from the Corporation, itself is sufficient to suggest dire necessity of the landlords. In her submission, in the absence of any dire necessity nobody would like to indulge in illegal construction. She submitted that

the circumstances compelled the plaintiffs to resort to illegal construction just to solve their residential problem temporarily, on ad-hoc basis pending litigation. Considering in its proper perspective, the act of the plaintiffs resorting to illegal construction to meet their need on temporary basis is a pointer sufficient to indicate dire need of the plaintiffs for additional accommodation.

12. Shri Khandeparkar, then contended that need of the landlords can be satisfied if landlords proceed to utilise the additional F.S.I. available with them since they have no problem of finance. It is difficult to accept this contention. Merely for the convenience of the tenant, Courts cannot expect the landlord to go for additional construction. This submission needs outright rejection.

13. Shri Khandeparkar, then submitted that family members in the family of plaintiffs are reduced on account of subsequent deaths in the family. Learned Counsel for the respondents in reply submitted that three marriageable candidates are in the family of the plaintiffs, subject to availability of the accommodation, intend to go for their marriages. She further submitted that increase or decrease by 1 or 2

family members should not be considered seriously as these aspects are already taken into account by the Courts below and reasonable and possible view has been taken by both the Courts below. In her submission, future growth of the family cannot be ignored. This submission seems to be reasonable.

14. In the aforesaid view of the matter, I have no hesitation to hold that respondents-landlords have proved their bonafide need. Both the Courts below have considered all the dimensions of the rival claims and have reached to a proper conclusion, holding that the plaintiffs have established their bonafide need.

15. Shri Khandeparkar then took me to the question of comparative hardship. He submitted that if defendant is directed to put the plaintiffs in possession, then he will suffer more hardship than that of the plaintiffs. The said submission needs outright rejection, in view of the fact that defendant initially tried to suppress availability of alternate suitable accommodation available at L.S. Memorial Co-operative Housing Society at Andheri, Mumbai, referred to hereinbefore and tried to mislead the Court by contending that the said accommodation was a service quarter.

16. It is not disputed that this quarter was acquired by the defendant sometime in the year 1977-78. It was expected on the part of the defendant to disclose this accommodation and not to mislead the Court by making misleading pleadings. Secondly, son of the petitioner is staying at Kuwait. He also has his independent accommodation available at Mumbai, which is said to be occupied by his wife and daughter. Defendant submits he has no control over the said accommodation. On being asked as to how he is surviving without their being any regular income , he submitted that his son who is in Kuwait keeps on remitting necessary expenses from Kuwait. If that be so, it is beyond imagination that the said accommodation would not be available for him.

17. Shri Khandeparkar, during the course of hearing, admitted that during the pendency of the suit proceedings, the accommodation acquired by the defendant/petitioner in L.S. Memorial Co-op.Housing Society Ltd., Manish Nagar, Andheri (W), Mumbai, has now been transferred by him in favour of his wife. According to the defendant, he is staying separately from his wife as he was not pulling on well with her. No decree of divorce has been produced on record.

Some of the correspondence addressed to the defendant at Andheri address was sought to be shown to me during the course of hearing. For want of material on record, the story sought to be put up by the defendant about dispute with his wife hardly inspire judicial confidence.

18. In the circumstances, taking overall view of the matter, I do not think this petition deserves any consideration on merits. The petition is, therefore, dismissed in limine with no order as to costs.

19. At this stage, learned Counsel for the petitioner prayed for time to vacate the suit premises subject to furnishing usual undertaking. This request is opposed by the learned Counsel for the respondents. However, in my view, it would be reasonable to grant 4 months time to the petitioner to vacate the suit premises subject to furnishing usual undertaking that he will not transfer and/or create any third party interest in the suit premises and that he will vacate the same without any demur and/or objection with the expiry of 4 months i.e. on or before 31st January 2005. Undertaking to be filed within one week from today, failing which it will be open for the respondents- decree holders to execute the decree in

accordance with law to seek possession of the suit premises.